



Scottish Parliamentary Commissions and Commissioners etc. Act 2010

2010 asp 11

PART 1

THE COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE IN
SCOTLAND: THE PUBLIC STANDARDS COMMISSIONER FOR SCOTLAND
AND THE PUBLIC APPOINTMENTS COMMISSIONER FOR SCOTLAND

The Commission and the Commissioners

1 Establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland

- (1) There is established a corporate body to be known as the Commission for Ethical Standards in Public Life in Scotland (in this Part, the “Commission”).
- (2) It has two members; they are to be appointed by the Parliamentary corporation with the agreement of the Parliament.
- (3) One of them is to be so appointed as the Public Standards Commissioner for Scotland; and is to be known as such.
- (4) The other is to be so appointed as the Public Appointments Commissioner for Scotland; and is to be known as such.
- (5) They have, respectively, the functions transferred to them by section 2(1) and (2).
- (6) Each of them is referred to in this Part as a “Commissioner”.
- (7) The functions of the Commission are—
 - (a) to provide the Commissioners with the property, staff and services they need in order to perform their respective functions, and
 - (b) to make such arrangements as are appropriate and practicable for the co-ordination of the performance of those respective functions.

Status: Point in time view as at 01/04/2011.

Changes to legislation: There are currently no known outstanding effects for the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, Part 1. (See end of Document for details)

2 Functions of the Commissioners

- (1) There are transferred to the Public Standards Commissioner for Scotland—
 - (a) the Chief Investigating Officer's functions under the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), and
 - (b) the Scottish Parliamentary Standards Commissioner's functions under the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16).
- (2) There are transferred to the Public Appointments Commissioner for Scotland the functions of the Commissioner for Public Appointments in Scotland under the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).
- (3) Accordingly, the offices of—
 - (a) the Chief Investigating Officer,
 - (b) the Scottish Parliamentary Standards Commissioner, and
 - (c) the Commissioner for Public Appointments in Scotland,
 are abolished.
- (4) The enactments mentioned in subsections (1) and (2) are referred to in this Act as, respectively—
 - (a) the “Ethical Standards Act”,
 - (b) the “Parliamentary Standards Act”, and
 - (c) the “Public Appointments Act”.
- (5) Those enactments, the Scottish Public Services Ombudsman Act 2002 (asp 11) and the Public Services Reform (Scotland) Act 2010 (asp 8) are consequentially amended in schedule 1.

3 Status of Commission and Commissioners

- (1) The Commission—
 - (a) is not a servant or agent of the Crown,
 - (b) has no status, immunity or privilege of the Crown.
- (2) The Commissioners—
 - (a) are not servants or agents of the Crown,
 - (b) have no status, immunity or privilege of the Crown.

4 Independence of Commissioners

In the performance of their respective functions, the Commissioners are not subject to the direction or control of—

- (a) any member of the Parliament,
- (b) any member of the Scottish Executive, or
- (c) the Parliamentary corporation.

5 Protection of Commission from actions for defamation

- (1) For the purposes of the law of defamation, any statement made by the Commission in pursuance of its functions has qualified privilege.

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- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

6 Designation of Chief Commissioner

- (1) The Parliamentary corporation must keep the effectiveness of the working arrangements of the Commission under review and may, at any time—
- (a) designate a Commissioner as the Chief Commissioner,
 - (b) revoke the designation,
- and give directions to the Commission accordingly.
- (2) A designation or revocation under this section does not affect—
- (a) the period of office of the Commissioner,
 - (b) the validity of anything done by the Commission or either Commissioner, or
 - (c) the performance of the functions that a Commissioner has by virtue of sections 1(5) and 2(1) or (2).

7 Appointment of acting Commissioner

- (1) If the office of a Commissioner is vacant or a Commissioner is, for any reason and to any extent, unable to act, the Parliamentary corporation may appoint a person (an “acting Commissioner”) to perform the functions of the Commissioner, either generally or in relation to such matters or class of matter as is specified in the terms and conditions of the appointment.
- (2) An appointment of an acting Commissioner is for, or until, such time as is specified in the terms and conditions of appointment.
- (3) A Commissioner and an acting Commissioner may each perform the same functions at the same time but in relation to different matters.
- (4) Subject to subsection (5), a person who is not eligible for appointment as a Commissioner is not eligible for appointment as an acting Commissioner.
- (5) Members of the Commission's staff are eligible for appointment as an acting Commissioner.
- (6) The other Commissioner is eligible for appointment as an acting Commissioner.
- (7) An acting Commissioner—
- (a) may at any time resign by notice given to the Parliamentary corporation,
 - (b) may at any time be removed from office by the Parliamentary corporation,
 - (c) subject to this section, holds office on such terms and conditions as the Parliamentary corporation determines, and
 - (d) is to be regarded for all purposes, except those of sections 9(1) to (4) and 10, as having the same status, functions and rights and being subject to the same restrictions as the Commissioner in respect of whom the acting Commissioner was appointed.
- (8) The Parliamentary corporation may, in the terms and conditions of appointment of an acting Commissioner, specify the minimum period of notice for the purposes of subsection (7)(a).

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Office of Commissioner

8 Disqualification

- (1) A person is disqualified from appointment and from holding office as a Commissioner if the person—
- (a) is a member of the Parliament or its staff,
 - (b) was a member of the Parliament at any time within two years before the date when the appointment might otherwise have been made,
 - (c) is disqualified from being a member of the Parliament,
 - (d) is a member of the House of Commons,
 - (e) is a member of the House of Lords entitled to vote there,
 - (f) is employed, or appointed in any other capacity, by the Commission,
 - (g) is a member, employee or appointee of—
 - (i) the Standards Commission for Scotland,
 - (ii) a specified authority, or
 - (iii) a devolved public body,
 - (h) is a specified authority (where the authority is an individual),
 - (i) is, or is an employee or appointee of, the Scottish Public Services Ombudsman,
 - (j) is a member of a council or any committee of a council,
 - (k) is disqualified from being a member of a council, or
 - (l) is a member of a joint board or joint committee.
- (2) In this section—
- (a) the following expressions have the following meanings—
 - “specified authority” means any of the specified authorities referred to in section 2(1) of the Public Appointments Act,
 - “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
 - “joint board” and “joint committee” have, respectively, the meanings given by section 235(1) of the Local Government (Scotland) Act 1973 (c. 65),
 - “devolved public body” has the meaning given by section 28(1) of the Ethical Standards Act,
 - (b) the reference to a member of a specified authority includes a reference to—
 - (i) a member, by co-option, of any committee of a specified authority,
 - (ii) a holder of a paid office appointed by a specified authority, and
 - (c) a paid office is one where the holder is entitled to remuneration, allowances or expenses or any combination of them.

9 Terms of office and remuneration

- (1) Each Commissioner—
- (a) holds office for such period, not exceeding eight years, as the Parliamentary corporation, at the time of appointment, determines, but
 - (b) is ineligible for reappointment at any time.

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- (2) A Commissioner may, at any time, resign by notice given to the Parliamentary corporation.
- (3) A Commissioner may be removed from office by the Parliamentary corporation if subsection (4) applies.
- (4) This subsection applies if—
 - (a) the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner's terms and conditions of office and the Parliament resolves that the Commissioner should be removed from office for that breach, or
 - (b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform that Commissioner's functions, and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.
- (5) Each Commissioner is entitled to such remuneration and allowances as the Parliamentary corporation determines.
- (6) In other respects, each Commissioner holds office on such terms and conditions as the Parliamentary corporation determines.
- (7) Those terms and conditions may, without prejudice to section 8—
 - (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
 - (b) provide that the Commissioner's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.
- (8) In subsection (7), “specified” means specified in the terms and conditions of office or within a description so specified.
- (9) The Parliamentary corporation may, in the terms and conditions of office of a Commissioner, specify the minimum period of notice for the purposes of subsection (2).

10 Pensions etc.

- (1) The Commission may, with the approval of the Parliamentary corporation, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a Commissioner.
- (2) Those arrangements may include—
 - (a) the making of contributions or payments towards provision for such pensions, allowances or gratuities,
 - (b) the establishment and administration of one or more pension schemes.
- (3) References in subsections (1) and (2) to pensions, allowances and gratuities include, respectively, references to pensions, allowances and gratuities by way of compensation for loss of office.

11 Subsequent appointments etc. of former Commissioner

- (1) A person who has ceased to be a Commissioner may not, without the approval of the Parliamentary corporation—

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- (a) be employed, or appointed in any other capacity, by the Commission,
 - (b) be a member, employee or appointee of—
 - (i) the Standards Commission for Scotland,
 - (ii) a specified authority, or
 - (iii) a devolved public body,
 - (c) be a specified authority (where the authority is an individual),
 - (d) be, or be an employee or appointee of, the Scottish Public Services Ombudsman, or
 - (e) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of section 9(7)(a), that person could not have held or, as the case may be, engaged in when a Commissioner.
- (2) The restriction in subsection (1)—
- (a) starts when the person ceases to be a Commissioner, and
 - (b) ends on the expiry of the financial year following the one in which it started.
- (3) In this section—
- (a) the following expressions have the following meanings—
 - “specified authority” means any of the specified authorities referred to in section 2(1) of the Public Appointments Act,
 - “devolved public body” has the meaning given by section 28(1) of the Ethical Standards Act,
 - (b) the reference to a member of a specified authority includes a reference to—
 - (i) a member, by co-option, of any committee of a specified authority,
 - (ii) a holder of a paid office appointed by a specified authority, and
 - (c) a paid office is one where the holder is entitled to remuneration, allowances or expenses or any combination of them.

General functions, procedures etc. of Commission

12 General powers

- (1) The Commission may do anything which appears—
- (a) necessary or expedient for the purpose of or in connection with, or
 - (b) conducive to,
- the performance of its functions or the efficiency of its administration.
- (2) In particular, the Commission may—
- (a) enter into contracts,
 - (b) acquire and dispose of land and other property.
- (3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.
- (4) The Commission may determine and charge reasonable sums for anything done or provided by it or on its behalf in the performance of, or in connection with, its functions.

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- (5) The Commission must retain any sums received by it by virtue of subsection (4) and apply them to meet expenditure incurred in doing or providing whatever is charged for.

13 Payment of witnesses' expenses

The Commission may pay to persons giving evidence, producing documents or providing information under section 13 of the Ethical Standards Act or section 13 of the Parliamentary Standards Act such allowances or expenses as it may, with the approval of the Parliamentary corporation, determine.

14 Strategic plans

- (1) The Commission must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Commission and each Commissioner propose to perform their respective functions during the 4 year period.
- (2) A strategic plan must, in particular, set out—
- (a) the Commission's and each Commissioner's objectives and priorities during the 4 year period,
 - (b) how the Commission and each Commissioner propose to achieve them,
 - (c) timetables for doing so, and
 - (d) estimates of the costs of doing so.
- (3) Before laying a strategic plan before the Parliament, the Commission must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
- (a) the Parliamentary corporation, and
 - (b) such other persons as the Commission think appropriate.
- (4) The reference in subsection (3)(b) to other persons includes a reference to a committee of the Parliament.
- (5) The Commission must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Commission must arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Commission may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of four years beginning on 1 April next following the coming into force of this section and each subsequent period of four years.

15 Procedure and validity of acts

- (1) The Commission may regulate its own procedure.

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- (2) The validity of its acts is not affected by—
 - (a) any defect in the appointment of a Commissioner,
 - (b) any disqualification from appointment as a Commissioner of any person bearing to be a Commissioner, or
 - (c) any vacancy in the office of a Commissioner.
- (3) The validity of acts of a Commissioner is not affected by—
 - (a) any defect in the appointment of the Commissioner, or
 - (b) any disqualification from appointment as a Commissioner of the person bearing to be the Commissioner.
- (4) Subsection (1) is subject to—
 - (a) any direction in that regard given by the Parliamentary corporation, and
 - (b) the other provisions of this Part.

16 Delegation

- (1) Any function of the Commission may be performed on its behalf by any person (whether or not a Commissioner or a member of its staff) authorised by it to do so, and to the extent so authorised.
- (2) Subsection (1) does not affect the Commission's responsibility for the performance of its functions.
- (3) Any function of a Commissioner may be performed on the Commissioner's behalf by any person (whether or not the other Commissioner or a member of the Commission's staff) authorised by the Commissioner to do so, and to the extent so authorised.
- (4) Subsection (3) does not affect the responsibility of either of the Commissioners for the performance of that Commissioner's functions.

Staff, advisers etc.

17 Staff

- (1) The Commission may, for the purposes of section 1(7), appoint staff on such terms and conditions as it determines.
- (2) The Commission may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of its staff.
- (3) Those arrangements may include—
 - (a) the making of contributions or payments towards provision for such pensions, allowances or gratuities, and
 - (b) the establishment and administration of one or more pension schemes.
- (4) References in subsections (2) and (3) to pensions, allowances or gratuities include, respectively, references to pensions, allowances or gratuities by way of compensation for loss of employment.
- (5) The exercise of a power in this section is subject to the approval of the Parliamentary corporation.

Status: Point in time view as at 01/04/2011.

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18 Advisers, assessors and other services

- (1) The Commission may obtain for itself or for a Commissioner advice, assistance or any other service from any person who, in the opinion of the Commission, is qualified to give it.
- (2) The Commission may pay to that person such fees and allowances as it determines.
- (3) Any payment under subsection (2) is subject to the approval of the Parliamentary corporation.

Finance

19 Accountable officer

- (1) The Parliamentary corporation must designate a Commissioner or a member of the Commission's staff as the accountable officer for the purposes of this section.
- (2) The functions of the accountable officer are—
 - (a) signing the accounts of the expenditure and receipts of the Commission,
 - (b) ensuring the propriety and regularity of the finances of the Commission,
 - (c) ensuring that the resources of the Commission are used economically, efficiently and effectively, and
 - (d) the duty in subsection (3).
- (3) Where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of a function set out in subsection (2)(a) to (c), the accountable officer must—
 - (a) obtain written authority from the Commission before taking the action, and
 - (b) as soon as possible, send a copy of the authority to the Auditor General for Scotland.
- (4) The accountable officer is answerable to the Parliament for the performance of the functions in subsection (2).

20 Budget

- (1) The Commission must, before the start of each financial year, prepare proposals for its use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
- (2) The Commission may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or a revised budget, the Commission must ensure that the resources of the Commission will be used economically, efficiently and effectively.
- (4) A budget or revised budget must contain a statement that the Commission has complied with the duty under subsection (3).

21 Funding

- (1) The Parliamentary corporation is to—

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- (a) pay the remuneration and allowances of each Commissioner,
 - (b) pay any expenses properly incurred by the Commission in the performance of its functions, so far as not met out of sums received and applied by it under section 12(5),
 - (c) indemnify the Commission and each Commissioner in respect of any liabilities incurred by it or, as the case may be, that Commissioner in the performance of its or, as the case may be, that Commissioner's functions.
- (2) Subsection (1)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commission which exceed or are otherwise not covered by a budget or, as the case may be, a revised budget approved under section 20.
- (3) However, the Parliamentary corporation may pay those expenses.

22 Accounts and audit

- (1) The Commission must, in accordance with any directions in that regard given by the Scottish Ministers—
- (a) keep proper accounts and accounting records,
 - (b) prepare annual accounts in respect of each financial year, and
 - (c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.
- (2) If requested by any person, the Commission must make the audited accounts available, at any reasonable time, without charge and in printed or electronic form, so that they may be inspected by that person.

Location of office and sharing of resources

23 Location of office

The Commission must comply with any direction given by the Parliamentary corporation as to the location of the Commission's office.

24 Sharing of premises, staff, services and other resources

The Commission must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other public body or any officeholder.

Annual reports

25 Annual reports

- (1) The Commission must lay before the Parliament annually a general report on the performance by the Commission and each of the Commissioners of their respective functions during the reporting year.
- (2) The report must include, in relation to the performance of the functions of the Public Standards Commissioner for Scotland—

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- (a) the numbers of complaints made to that Commissioner during the reporting year about, respectively—
 - (i) members of the Parliament,
 - (ii) councillors, and
 - (iii) members of devolved public bodies,
 - (b) the number of complaints made for the purposes of investigation under the Ethical Standards Act or the Parliamentary Standards Act which were withdrawn during the reporting year, broken down according to the stage of the investigation at which they were withdrawn,
 - (c) the numbers of investigations under the Ethical Standards Act—
 - (i) begun,
 - (ii) not proceeded with,
 - (iii) completed,during the reporting year,
 - (d) the number of outcome reports submitted to the Standards Commission for Scotland under section 14 of that Act during the reporting year,
 - (e) the number of further investigations that the Commissioner has, during the reporting year, been directed under section 16 of that Act to carry out,
 - (f) in relation to Stage 1 investigations—
 - (i) the number completed,
 - (ii) the number of complaints dismissed, and
 - (iii) the number of complaints considered admissible or treated, under section 7(7)(b) of the Parliamentary Standards Act, as meeting all the specified requirements,during the reporting year,
 - (g) in relation to Stage 2 investigations—
 - (i) the number completed,
 - (ii) the number of outcome reports made under section 9 of the Parliamentary Standards Act,during the reporting year, and
 - (h) the number of further investigations that the Commissioner has been directed to carry out under section 10(2) of that Act during the reporting year.
- (3) The report must include, in relation to the performance of the functions of the Public Appointments Commissioner for Scotland—
- (a) a summary of any revisals made under section 2(3)(b) of the Public Appointments Act to the code of practice,
 - (b) a summary of any section 2(5)(b) complaints received by that Commissioner,
 - (c) a summary of any guidance to the Scottish Ministers issued under section 2(6) of the Public Appointments Act,
 - (d) the number of section 2(8)(a) reports made, and
 - (e) the number of section 2(8)(b) directions made,
- during the reporting year.
- (4) The report must also include a summary of the Commission's activities during the reporting year.
- (5) The report must be laid before the Parliament within seven months after the end of the reporting year.

Status: Point in time view as at 01/04/2011.

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- (6) The Commission must arrange for the publication of each report laid before the Parliament under this section.
- (7) In preparing a report under this section, the Commission must comply with any direction given by the Parliamentary corporation as to the form and content of the report.
- (8) In this section—
- “reporting year” means the year beginning on 1 April,
 - “devolved public bodies” has the meaning given by section 28(1) of the Ethical Standards Act,
 - “Stage 1” and “Stage 2” are to be construed in accordance with section 5(1) of the Parliamentary Standards Act,
 - “section 2(5)(b) complaints” are complaints to which section 2(5)(b) of the Public Appointments Act applies (those arising from certain appointments, or recommendations for appointments, made by Scottish Ministers),
 - “section 2(8)(a) reports” are reports made under section 2(8)(a) of that Act (about continued non-compliance with the code of practice on appointments),
 - “section 2(8)(b) directions” are directions to Scottish Ministers under section 2(8)(b) of that Act (to delay appointment or recommendation pending consideration by the Parliament).

Ombudsman's investigations and freedom of information

26 Commission and Commissioners to be subject to investigations by Scottish Public Services Ombudsman

- (1) Before paragraph 21A in Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (amendable list of authorities subject to investigation by Ombudsman) there is inserted—

“21ZA The Commission for Ethical Standards in Public Life in Scotland in the performance of its functions under section 1(7) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 12).”

- (2) After paragraph 32A in that Part of that schedule there is inserted—

“32B The Public Appointments Commissioner for Scotland.

32C The Public Standards Commissioner for Scotland in the performance of functions under the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7).”

27 Commission and Public Appointments Commissioner for Scotland to be subject to Freedom of Information (Scotland) Act

- (1) After paragraph 62 in Part 7 of schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (Scottish public authorities subject to the Act) there is inserted—

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“62ZZA The Commission for Ethical Standards in Public Life in Scotland in the performance of its functions under section 1(7) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 12).”

(2) After paragraph 75 in that Part of that schedule there is inserted—

“75ZA The Public Appointments Commissioner for Scotland.”

Interpretation

28 Interpretation of Part 1

In this Part, except where the context otherwise requires—

“Commission” means the Commission for Ethical Standards in Public Life in Scotland,

“Commissioner” means a Commissioner appointed under section 1(2),

“the Parliament” means the Scottish Parliament,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body.

Status:

Point in time view as at 01/04/2011.

Changes to legislation:

There are currently no known outstanding effects for the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, Part 1.